

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

STACY HINNERS, et al. <i>Plaintiffs,</i> v. CITY OF HURON, et al. <i>Defendants.</i>	Case No. 1:19-cv-02868 Judge J. Philip Calabrese Magistrate Judge Thomas M. Parker
PLAINTIFFS' REPLY TO DEFENDANT KEVIN KOEHLER'S RESPONSE TO SHOW-CAUSE ORDER AND AFFIDAVIT (ECF NOS. 114 AND 114-1)	

Defendant Kevin Koehler's response to the show-cause motion and his accompanying affidavit fail to address the actual record of events:

- On May 16, 2023, the Court scheduled a case-management conference for nearly 60 days later, July 12. (Case-management conference scheduling order, ECF No. 99, PageID#2358);
- Despite having had that much notice, just two days before the July conference, Koehler moved to be excused because he would be "out of state" (Defs.' Mtn. to Excuse Defendant Koehler's Appearance at July 12, 2023 CMC, ECF No. 103, PageID#2380; *see also* Plaintiffs' Non-Opposition to same, ECF No. 104, PageID#2382; and Court's Order on same, ECF No. 105, PageID#2383; Court's Non-Document Order of July 19, 2023);
- The parties, after conferring with the Court about availability, rescheduled the conference at his request to August 17 (*see* Court's Order on Defs.' Mtn. to Excuse Defendant Koehler's Appearance at July 12, 2023 CMC, ECF No. 105, PageID#2383; Court's Non-Document Order of July 19, 2023);

- Despite agreeing to that date 30 days in advance, just two days before the August conference, Koehler again asked to be excused because, again, he was “out of state” (Defs. Orzech and Koehler’s Mtn. for New Date for CMC, ECF No. 108, PageID#2412);
- The Court declined to excuse Koehler and ordered him to appear on August 17 (Court’s Order on Defs. Orzech and Koehler’s Mtn. for New Date for CMC, ECF No. 110, PageID#2416);
- Koehler failed to appear on August 17 (Court’s Non-Document Minutes of Proceedings of August 17, 2023 case-management conference); and
- Koehler’s former counsel, Mr. Downey, represented only that Koehler was not present and was aware of the Court’s order.

Koehler’s response makes it clear that he *knew* of the Court’s Order and *could have* appeared as ordered on August 17. Contrary to his suggestion, he did not need to cancel his vacation or bring his family. *See* Koehler Aff. at ¶ 4, ECF No. 114-1, PageID#2430 (“On August 17, 2023, I was scheduled to be in Myrtle Beach, South Carolina on vacation with my wife and three children.”) He just needed to fly or drive back for a day personally. His invocation of his “modest household income” (*id.*) is irrelevant. He could have booked an inexpensive flight from Myrtle Beach to Cleveland, at the insurer or City’s case-related expense, and been back in South Carolina later that same or the next day.

Instead, Koehler chose to defy the Court’s order. That was not a “mistake”; it was a deliberate choice. That choice should have consequences for Koehler as it does for so many parties who fail to appear before courts when summoned by police or otherwise ordered—parties with far fewer means and far more understandable reasons for absence like health issues, work conflicts, lack of transportation, and lack of childcare.

By failing to address the fact that he drove the rescheduling of the case-management conference in the first place, apparently to accommodate his “out-of-state” vacation, Koehler avoids explaining why he engineered the entire rescheduling episode to an August date he offered, with no apparent intention of ever complying. He should be required to do so at the hearing.

Given this record, Plaintiffs respectfully request Defendant Koehler, at a minimum, be required to pay the reasonable fees and costs associated with Plaintiffs’ motion practice relating to his failure to appear as ordered in July and again in August.

Dated: October 19, 2023

Respectfully submitted,

/s/ Subodh Chandra

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